

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 497 Personal Care Attendant Program
SPONSOR(S): Gardiner and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 922

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Healthy Seniors</u>	<u>8 Y, 0 N</u>	<u>Walsh</u>	<u>Schoolfield</u>
2) <u>Healthcare Council</u>	<u></u>	<u>Walsh</u>	<u>Gormley</u>
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

House Bill 497 amends the existing Personal Care Attendant program (PCA program) to expand eligibility to persons who have severe and chronic disabilities of all kinds. The bill derives from the experience of the Cross Disability Pilot program established in the 2006 General Appropriations Act, providing personal care attendants to the significantly disabled in Orange, Osceola, Lake and Seminole counties. The expanded program is available statewide. The bill automatically makes eligible and enrolls in the expanded program those persons participating in the PCA program on June 30, 2007.

The bill redirects 90 percent of the sales tax collections obtained through the Tax Collection Enforcement Diversion program from the General Revenue Fund to the Able Trust as one source of funding for the expanded personal care attendant program. The Revenue Estimating Conference analysis dated March 8, 2007, estimates this impact to be \$1 million.

The bill takes effect July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes — The bill does not propose any additional taxes or fees; however, the bill redirects 90 percent of the sales tax collections obtained through the tax collection enforcement diversion program from the General Revenue Fund to the Able Trust as one source of funding for the expanded personal care attendant program.

Promote Personal Responsibility --- The bill provides personal care attendants to disabled individuals who, without such assistance, would be unable to obtain or maintain employment and who would otherwise be in need of government assistance.

B. EFFECT OF PROPOSED CHANGES:

House Bill 497 amends the existing Personal Care Attendant program (PCA program) to expand eligibility to persons who have severe and chronic disabilities of all kinds. The bill derives from the experience of the Cross Disability Pilot program established in the 2006 General Appropriations Act, providing personal care attendants to the significantly disabled in Orange, Osceola, Lake and Seminole counties. The expanded program is available statewide. The bill automatically makes eligible and enrolls in the expanded program those persons participating in the PCA program on June 30, 2007.

As one source of funding for the expanded program, HB 497 proposes to redirect 90 percent of the sales tax collections obtained through the Tax Collection Enforcement Diversion program from the General Revenue Fund to the Able Trust, an increase from the current 50/50 split.

The PCA program and the Cross Disability Pilot programs and their funding sources are described in detail below.

Background

Personal Care Attendant Program

The Personal Care Attendant (PCA) program was established to assist eligible persons, who are disabled because of a traumatic spinal cord injury, to return to work in their communities by providing personal care attendants.¹ The program is available to persons at least 18 years of age who are significantly disabled because of a traumatic spinal cord injury and:

- Who require a personal care attendant for bathing, dressing, bowel and bladder management, and transportation
- Who require a personal care attendant to obtain or maintain substantial gainful employment
- Who are able to hire and supervise a personal care attendant
- Who meet one of the following requirements:
 - Live in a nursing home.
 - Have recently moved out of a nursing home to participate in a Medicaid home and community-based waiver program.
 - Are presently employed, but because of a loss of a caregiver, will lose employment and potentially return to a nursing home.

¹ Chapter 2002-286, Laws of Florida, established the PCA Program as a pilot; the Program was made permanent in Chapter 2005-172, Laws of Florida.

Responsibility for implementation and administration of the PCA program is with the PCA Program Oversight Workgroup, consisting of two persons who have traumatic spinal cord injuries or who are family members of persons with traumatic spinal cord injuries; and one representative each from the Florida Association of Centers for Independent Living (FACIL); the Department of Revenue (DOR); the Brain and Spinal Cord Injury (BSCI) program² in the Department of Health (DOH); the Florida Medicaid program in AHCA; the Florida Endowment Foundation for Vocational Rehabilitation (known as the Able Trust); and the Division of Vocational Rehabilitation (VR) of the Department of Education (DOE).

PCA Program enrollment is shown in the following table:

	Cumulative Enrollment
January 2006 ³	3
April 2006	8
July 2006	15
October 2006	19
January 2007	22

According to the procedures established by the PCA Program Oversight Workgroup, each participant is provided \$500 per month (\$6,000 per year) to reimburse him or her for the cost of his or her personal care attendant.

Funding for the PCA Program

There are two funding sources for the existing PCA Program: proceeds from the Tax Collection Enforcement Diversion Program and from the Motorcycle Specialty License (Bikers Care) Tag.⁴

Tax Collection Enforcement Diversion Program: In conjunction with the establishment of the PCA Program, the Legislature directed FACIL and the state attorney's offices in the participating counties to implement a Tax Collection Enforcement Diversion program (Diversion program), which collects revenue from persons who have not remitted their sales taxes. Section 413.4021(1), F.S., specifies that 50 percent of those collections are to be remitted by DOR to the Able Trust to be used to implement the PCA program, with the other 50 percent going to the General Revenue Fund.

According to the Revenue Estimating Conference, in through February of FY 2006-2007 the Tax Collection Enforcement Diversion programs in the five participating counties collected and DOR remitted the following:

County	Total Collected FY 2006-2007 through February	50% to Able Trust	50% to General Revenue
Broward	\$163,872	\$81,936	\$81,936
Dade	215,324	107,662	107,662
Duval	358,813	179,406	179,406
Hillsborough	436,906	218,453	218,453
Palm Beach	177,307	88,653	88,653
Total	\$1,352,222	\$676,111	\$676,111

² BSCI provides a statewide coordinated infrastructure to provide access to medical care and rehabilitation for individuals with moderate to severe traumatic brain and spinal cord injuries, which enables individuals to return to community settings. The BSCI program refers individuals who have the potential to obtain gainful employment directly to VR.

³ Although established in 2002, the Program was unable to identify persons who were able to meet the statutory eligibility criteria. In 2005, the Legislature modified the criteria to include persons who had already transitioned out of nursing homes or into employment. See *Chapter 2005-172, Laws of Florida*, effective July 1, 2005.

⁴ See s. 413.402, F.S. and s. 320.08068, F.S.

The Able Trust, in turn, remits funds to FACIL to administer and operate the PCA program.

Motorcycle Specialty (Bikers Care) Tag: Since 2003, the Department of Highway Safety and Motor Vehicles (DHSMV) has offered a specialty tag to the owner or lessee of any motorcycle who chooses to pay the additional cost. Pursuant to s. 320.08068(4), F.S., 20 percent⁵ of the proceeds from the sale of that tag are remitted to the Able Trust to operate the PCA Program. In Fiscal Year 2005-2006, FACIL received \$60,388.75 from the Able Trust as their share of the specialty tag proceeds.

Cross Disability Pilot Program

In 2006, the Legislature appropriated \$400,000 in non-recurring general revenue⁶ to establish a pilot personal care attendant program in Orange, Osceola, Lake and Seminole counties. In contrast to the statutory PCA Program which may serve only those who suffer from traumatic spinal cord injuries, this Cross Disability pilot is intended to serve persons who are significantly physically or mentally disabled without regard to the underlying cause of the disability. Such individuals who need the assistance of a personal care attendant to accept or maintain employment are eligible to enroll in the pilot program.

Operating procedures for the Cross Disability pilot are based on the experiences of the existing PCA program and the cross disability personal assistance programs of six other states. The pilot began enrollment in January 2007; enrollment is shown in the following table:

	Cumulative Enrollment
October 2006	1
December 2006	2
January 2007	8
February 2007	11

The Cross Disability pilot program provides each participant up to \$1,500 per month to pay for a personal care attendant. The maximum reimbursable amount is based on a formula which takes into account a participant's income. Among current enrollees, those maximums range from \$1,238.15 to \$1,500; in no case, however, may a participant be reimbursed for more than the amount actually paid to his or her personal care attendant.

Because the appropriation establishing the pilot specified non-recurring general revenue, the Cross Disability pilot will be without funds on June 30, 2007.

Effect of Proposed Legislation

HB 497 amends the existing PCA Program and expands participant eligibility in order to provide personal care attendants to persons who have severe and chronic disabilities of all kinds. The program is available to:

- Persons at least 18 years of age who are significantly and chronically disabled;
- Who require a personal care attendant for assistance with or support for at least two activities of daily living, such as bathing, dressing, bowel and bladder management, grooming and hygiene, organization, and transportation
- Who require a personal care attendant in order to accept a job or maintain substantial gainful employment; and
- Who are able to acquire and direct a personal care attendant.

⁵ Prior to July 1, 2006, the share allotted to the PCA Program was 25 percent. See *Chapter 2006-169, Laws of Florida*.

⁶ See Specific Appropriation 340, General Appropriations Act, Chapter 2006-25, *Laws of Florida*. These funds were appropriated to the Department of Children and Families and are being distributed to FACIL pursuant to grant agreements.

The bill requires FACIL to provide training to program participants on hiring and managing a personal care attendant. It deletes requirements that FACIL, DOH, and the Able Trust develop a program to recruit, screen, and select persons to be trained as personal care attendants. It also deletes provisions allowing nurse registries to recruit and screen candidates to act as fiscal intermediaries to make payments to personal care attendants under the program.

HB 947 places the administration of the program solely with FACIL. It establishes an oversight group to review and revise policies and procedures governing the program. The group must include, at a minimum, the following:

- A member of FACIL
- A program participant
- A representative of DCF
- A representative of VR
- A representative of the Medicaid program
- A representative of the Able Trust
- A representative of the BSCIP

HB 497 increases the percentage of revenue collected from the tax collection enforcement diversion program to be remitted to the Able Trust for operation of the program from 50 percent to 90 percent.

The bill provides that all persons who are enrolled in the existing PCA program on June 30, 2007 are automatically eligible for and enrolled in the amended program.

HB 497 is effective on July 1, 2007.

C. SECTION DIRECTORY:

Section 1: Amends s. 413.402, F.S.; requires FACIL to administer a program to provide personal care attendants to persons having severe and chronic disabilities of all kinds; amends program eligibility standards; deletes requirements relating to recruitment, screening and selection of personal care attendants; requires FACIL to provide certain training to program participants; establishes an oversight group and provides membership.

Section 2: Amends s. 413.4021, F.S.; increases the percentage of revenue collected from the tax enforcement diversion program to be remitted to the Able Trust.

Section 3: Provides for automatic enrollment in the program for certain persons.

Section 4: Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill decreases the percent of collected sales tax received from the Tax Collection Enforcement Diversion program that would be deposited in the General Revenue Fund. Under current law, 50 percent is deposited in General Revenue --- in Fiscal Year 2005-2006, that amount was \$778,643.63. HB 497 decreases that percentage to 10 percent. The Revenue Estimating Conference analysis dated March 8, 2007, estimates this impact to be \$1 million.

2. Expenditures:

The Department of Revenue reports that it anticipates increased State Attorney participation in the Tax Collection Enforcement Diversion Program by at least two judicial circuits as a result of this bill. DOR prepares diversion cases and refers them to the participating state attorney. In support of the current effort, the agency has an investigator and the equivalent of one additional staff member in each of the five judicial circuits where the Diversion Program operates. If two new Diversion Programs were added, DOR would need two Investigators (Pay Grade 18) to work up the cases, and two Revenue Specialists (Pay Grade 17) to make adjustments to the SUNTAX system.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Not applicable

2. Expenditures:

Not applicable

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals with disabilities will have the opportunity to hire a personal care attendant to assist them in order to obtain or maintain gainful employment.

D. FISCAL COMMENTS:

As noted above, the existing PCA program provides participants \$500 per month for their personal care attendants; the Cross Disability pilot reimburses up to \$1,500 per month. FACIL advises that the program proposed in HB 497 will operate like the Cross Disability pilot; thus each participant in the expanded program will be reimbursed a maximum of \$1,500 per month for his or her personal care attendant. The maximum reimbursable amount is based on a formula which takes into account a participant's income. Among current enrollees, those maximums range from \$1,238.15 to \$1,500 per month; in no case, however, may a participant be reimbursed for more than the amount actually paid to his or her personal care attendant.

Under the terms of HB 497, all persons enrolled in the PCA Program on June 30, 2007, are automatically enrolled in the new program. FACIL advises that the 11 participants in the Cross Disability pilot will also be enrolled in the amended program,⁷ and estimates that an additional 12 participants could be served. Thus, 45 participants may receive a maximum reimbursement of \$1,500 per month, for an annual total of \$810,000.

There are also expenses associated with the Diversion Program, which is one source of funding for the PCA Program. As reported by FACIL,

For the first year of the PCA project, the Brain and Spinal cord Injury program provided a \$50,000 loan to the State Attorney's Office in each of the sites to establish a Tax Collection Enforcement Diversion Program office. To re-pay the loan, each diversion program site is required to pay 25 percent of each quarter's earnings to the BSCIP until they have paid back the full \$50,000.

After the first year and the loan payments are made, the rest of the collections up to an amount of \$50,000 per year are given back to the state attorney offices to support the cost of the diversion program. The remaining funds are then available to pay for personal care attendants for program participants.

⁷ See "Drafting Issues or Other Comments" related to these participants at page 8, *infra*.

FACIL has provided its (unaudited) financial report for Fiscal Year 2005-2006 as follows:

Receipts:

Broward	\$145,569.38
Dade	172,134.39
Duval	202,613.20
Hillsborough	181,838.98
Palm Beach	101,632.33
Motorcycle Tag	60,388.75
Total Receipts	\$864,177.03

Expenses:

Total of 5% repayments to BSCIP on FY receipts	\$ 40,189.41
Administration of Program	7,187.22
Payments to 5 Diversion Programs	250,000.00
Payments to Program Participants ⁸	15,939.00
Total Expenses	\$281,437.63

FACIL has been receiving funds to support the existing PCA Program since 2003. FACIL reports the following account balances as of January 31, 2007, to support administration and operation of the PCA Program:

Tax collection enforcement diversion program	\$1,366,587
Motorcycle specialty tag	84,136
Interest	36,606
Total funds on hand 1/31/07	\$1,487,319

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

As noted in "Drafting Issues or Other Comments" below, FACIL intends to use operating procedures developed through the pilot program to administer the new program. The Legislature might consider providing adequate guidelines regarding eligibility standards, reimbursement rates, and the like in order to ensure that the program is administered according to its direction.

B. RULE-MAKING AUTHORITY:

Not applicable.

⁸ It should be noted that there were a limited number of program participants during this period, and enrollment did not begin until half-way through the fiscal year. Thus, this expense item is much lower than it will be on a going forward basis.

C. DRAFTING ISSUES OR OTHER COMMENTS:

This bill derives from the research and experience of the Cross Disability pilot program. Representatives of FACIL have shared the successes of the pilot and their plans to operate the amended program. In that light, the following drafting comments are offered:

- HB 497 sets eligibility standards for program participants:
 - A participant must be at least 18 years of age [line 44]. FACIL advises that the procedures which will be used to operate the amended program include an upper limit on participation of age 65. It is suggested that consideration be given to amending the bill to include or exclude this and other details of the operating procedures.
 - A participant must need “assistance with, or support for, at least two activities of daily living” [lines 46-47]. “Activities of daily living” and “activity of daily living” are terms which are defined elsewhere in Florida Statutes⁹ --- differently from each other and differently than in HB 497. It is suggested that the bill be amended to adopt one of the existing statutory definitions or specify the activities which qualify one for eligibility.
- The bill requires FACIL and the oversight group to “**review and revise** the policies and procedures governing the program” [lines 63-81, emphasis supplied]. FACIL advises that the policies and procedures developed in the Cross Disability pilot program will be used to operate the program proposed here. It is suggested that the bill be amended to require that the oversight group “**adopt and revise** the policies and procedures” which will govern this new program.
- It is suggested that, due to the amendment at line 33 requiring FACIL to administer the new program, an existing reference to program administration s. 413.4021(2), F.S., be deleted for clarity.
- The bill provides that all persons enrolled in the PCA program on June 30, 2007, are automatically enrolled in the amended program [lines 144-148]. However, the bill does not address the enrollment of the participants in the Cross Disability pilot program, which is funded only through June 30, 2007. It is suggested that the bill be amended to provide automatic eligibility and enrollment in the amended program for those participating in the pilot on June 30, 2007.

D. STATEMENT OF THE SPONSOR:

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

At its March 6, 2007, meeting the Committee on Healthy Seniors adopted a strike-all amendment to HB 497. The strike-all amends the bill as filed in the following ways:

- It requires the Able Trust to contract with FACIL to administer the PCA program.
- Effective July 1, 2007, of the funds deposited with the Able Trust to operate the PCA program, FACIL will receive 15 percent to administer the program.
- It specifies that “activities of daily living” are as defined in s. 429.02, and requires that either a physician or psychiatrist determine whether a participant needs assistance with those activities.
- FACIL and the oversight group are required to adopt and revise policies and procedures governing the PCA program and the training program.
- An existing reference to the Able Trust selecting the entity to administer the program is deleted.

⁹ See ss. 429.02, 429.65, 381.745, 413.20, F.S.

- Participants enrolled in the pilot personal care attendant program in Lake, Orange, Osceola, and Seminole counties on June 30, 2007, are automatically eligible for and enrolled in the PCA program as amended by this act.

The Committee reported the bill favorably with a strike-all amendment.